

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

**GRACEY GENERAL PARTNERSHIP,  
A Tennessee General Partnership,**

**Plaintiff,**

**v.**

**CITY OF CLARKSVILLE, TENNESSEE,**

**JOE PITTS, Mayor of the City of  
Clarksville, Tennessee,**

**DAVID SMITH, Interim Head of the  
Department of Building and Codes of the  
City of Clarksville, Tennessee, and**

**DEIDRE WARD, Director of the  
Department of Building and Codes of the  
City of Clarksville, Tennessee,**

**Defendants.**

**Case No. 3:23-cv-01189**

**District Judge Aleta A. Trauger  
Magistrate Judge Alistair E.  
Newbern**

**MOTION TO DISMISS**

Come now the Defendants, the City of Clarksville, Tennessee (hereinafter, the “City”), Mayor Joe Pitts (hereinafter, “Mayor Pitts”), David Smith (hereinafter, “Mr. Smith”), and Deidre Ward (hereinafter, “Ms. Ward”), by and through undersigned counsel, and pursuant to Rule 12(b) (1), (2), (4), (5), (6) and (7) and Rule 19 of the Federal Rules of Civil Procedure, hereby submit this Motion to Dismiss the Complaint (Doc. 1). As discussed in detail in their contemporaneously submitted Memorandum of Law, the City, Mayor Pitts, Mr. Smith, and Ms. Ward respectfully request the entry of an Order dismissing all claims against them in this matter with prejudice for the following reasons (among others): **1)** due to the failure to pursue the statutorily prescribed

state court remedy (i.e., a petition for common law writ of certiorari, which is no longer available), the Plaintiff has procedurally defaulted all claims in the present action; **2)** the Plaintiff has no legitimate claim of entitlement to a demolition permit (or any justifiable expectation of obtaining said permit) and, therefore, fails to state a substantive due process claim; **3)** the Complaint fails to plead any specific facts in support of an equal protection claim, whether under a “class of one” theory or otherwise; **4)** the Plaintiff is not entitled to declaratory relief, as the exhibits to the Complaint demonstrate there is no actual, live controversy and, in any event, the declarations the Plaintiff seeks blatantly contradict the plain and unambiguous language of the pertinent local laws; **5)** the Complaint fails to plead any specific facts in support of any individual capacity claims; **6)** the individual Defendants enjoy qualified immunity; **7)** the official capacity claims are impermissibly redundant; **8)** the City cannot be liable for its reasonable interpretation of its own ordinance, nor can the City be liable for allegedly violating its own ordinance; **9)** the Complaint fails to identify a policy or custom of the City that was allegedly the driving force behind any purported Constitutional violation and, therefore, fails to state a claim for municipal liability under Monell; **10)** process and service of process were insufficient as to Mr. Smith and Ms. Ward; and **11)** punitive damages are not available against the City.

In support of this Motion, the Defendants rely upon the following:

1. Memorandum of Law;
2. Certified copy of Application for Appropriateness (to demolish structure), dated June 30, 2023;
3. Certified copy of email exchange between Jennifer Willoughby, Managing Partner of Plaintiff Gracey General Partnership, and Brent A. Clemmons, Design Review

- Coordinator/Planner for the Clarksville-Montgomery County Regional Planning Commission, dated July 5, 2023 regarding Application to demolish structure;
4. Certified copy of Agenda from July 24, 2023 meeting of Common Design Review Board;
  5. Certified copy of Minutes from July 24, 2023 meeting of the Common Design Review Board;
  6. Transcript of July 24, 2023 Meeting of the Common Design Review Board;
  7. Certified copy of email from Jennifer Willoughby, Managing Partner of Plaintiff Gracey General Partnership, to Brent A. Clemmons, Design Review Coordinator/Planner for the Clarksville-Montgomery County Regional Planning Commission, dated August 1, 2023 and requesting/lodging an appeal of the Common Design Review Board's decision denying the Application to demolish structure;
  8. Certified copy of receipt of appeal (and confirmation of assignment of case number for appeal);
  9. Certified copy of email from Jennifer Willoughby, Managing Partner of Plaintiff Gracey General Partnership, to Brent A. Clemmons, Design Review Coordinator/Planner for the Clarksville-Montgomery County Regional Planning Commission, dated August 14, 2023 and withdrawing the appeal of the Common Design Review Board's decision denying the Application to demolish structure;
  10. Certified copy of Agenda from August 29, 2023 meeting of the Clarksville-Montgomery County Regional Planning Commission noting/confirming (at final page) the Plaintiff's withdrawal of its appeal of the Common Design Review Board's decision denying Application to demolish structure;

11. Chapter 9.5 of the Clarksville Zoning Ordinance (entitled, “Downtown Urban Design Overlay District”), which includes Sections 9.5.1 (“General Description and Purpose”), 9.5.2 (“Downtown Overlay District Geographic Boundaries”), 9.5.3 (“Downtown Urban Design Standards and Guidelines”), 9.5.4 (“Project Approval Process”), and 9.5.5 (the “Appeals Process”);
12. Section 4-601 of the Official Code of the City of Clarksville;
13. Section 4-609 of the Official Code of the City of Clarksville;
14. Section 4-613 of the Official Code of the City of Clarksville;
15. Section 4-615 of the Official Code of the City of Clarksville; and
16. the pleadings filed to date.

Respectfully submitted,

BATSON NOLAN, PLC

By: /s/ Jeff T. Goodson  
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*Attorneys for the Defendants*

### **CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing has been served on the parties by the U.S. District Court Electronic Filing System and/or has been mailed, by U.S. Mail, to the following:

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on this the 7<sup>th</sup> day of March, 2024.

/s/ Jeff T. Goodson  
Jeff T. Goodson